



Special Needs Trusts and Estate Planning for a Disabled Beneficiary

People with disabilities sometimes rely on government benefits to pay for basic needs such as health insurance, housing, and long-term care. The value of these benefits can be substantial. Many public benefit programs are means-tested, meaning the beneficiary's assets and income must be below certain levels. Very often, these programs require the person's assets to be less than \$2,000.

For many people, the receipt of an inheritance is an opportunity to improve their lives. But for a disabled person receiving public benefits, the inheritance can actually worsen their life by terminating eligibility for benefits. The disabled person now has to use his or her inheritance to pay for health insurance, housing, the cost of personal attendants, and other basic needs that were previously covered by their benefits. Within a short time, the inheritance can be exhausted. The disabled person then has to go through the process of reapplying for government benefits and is faced with the prospect of spending the rest of his or her life having no more than \$2,000 to pay for needed goods and services.

Fortunately, there is a way to leave assets to a disabled person without jeopardizing his or her eligibility for public benefits. Assets left to a disabled person in a special needs trust do not have to be spent down to \$2,000 in order to maintain public benefits eligibility. The funds in the special needs trust can pay for "extras," or "special needs," that would improve the disabled person's quality of life, such as travel expenses, cell phone bills, cable television, companion care, tickets to the symphony or sporting events, and many other things not provided by public benefit programs. The disabled person retains government benefits to pay for the basic necessities of life.

A special needs trust is most often created in a will or trust, usually by the parent of the disabled person as part of their estate plan. The parent specifies that any bequest for the disabled child be held in a special needs trust. The parent selects a trustee, who has the responsibility to use the funds

for the benefit of the disabled person. The parent also selects the "remainder" beneficiaries of the trust, who will inherit any remaining trust assets after the disabled beneficiary passes away.

It is also possible to create a special needs trust with assets presently owned by a disabled person or with proceeds from the settlement of a personal injury case. However, there are additional restrictions when the disabled person uses his or her own money to set up the trust.

Setting up an ABLA Account for the disabled beneficiary may also be considered as a planning option (see our separate article on the ABLA Act). However, at this time, only \$16,000 per year can be set aside in an ABLA Account. And the primary remainder beneficiary at the passing of the disabled person will be the state. Therefore, for an anticipated inheritance of more than \$16,000, a special needs trust will likely be the best planning option for the disabled person and the family.

With proper planning, an inheritance left to a special needs trust for the benefit of the disabled person can enable the person to maintain eligibility for public benefits. Don't miss this opportunity to improve quality of life for a disabled beneficiary.

DISCLAIMER – *The information contained in this article should be used for general purposes and should not be construed as legal advice. Consult with your own attorney if you have specific legal questions.*

Geoff Bernhardt and Julie Nimnicht are elder law attorneys in Portland, Oregon. For more information on their firm and on estate planning issues, please visit www.elderlawpdx.com.

We Offer Free Educational Sessions on Estate Planning and Elder Law

Estate Planning:

- Wills and Living Trusts
- Financial Powers of Attorney
- Advance Directives for Healthcare
- Probate
- Planning for Mid-Life & Beyond
- Asset Protection & Financial Estate Planning

Elder Law:

- Medicaid Planning & Division of Assets
- Special Needs Trusts
- Asset Protection Plans
- Guardianship/Conservatorships
- End-of-Life Decision Making
- Long-Term Care Cost Planning
- Veterans Benefits

Contact us for information on upcoming events or to schedule an event for your organization. Educational sessions can be tailored to suit specific needs and requests.

**Geoff Bernhardt
Julie Nimnicht
Attorneys at Law**

**Law Offices of
Geoff Bernhardt & Julie Nimnicht**

5603 S Hood Avenue
Portland, OR 97239
503-548-4000

info@elderlawpdx.com
www.elderlawpdx.com
Follow us on Facebook